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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re:)
)
Revision of Section III,) RM _____
FCC Form 301)
)

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To: The Commission

MAY 23 1991

PETITION FOR RULE MAKING

FCC MAIL BRANCH

Joseph A. Belisle (Petitioner) requests that the Commission institute a rule making proceeding to replace the current version of Section III, FCC Form 301 with the June, 1977 version of Section III, FCC Form 301.¹ A copy of the June, 1977 Section III is appended hereto as Exhibit 1.²

Petitioner submits that adoption of the June, 1977 Section III, FCC Form 301 will not impose any additional burden on broadcast applicants. All the calculation and documentation of financial qualifications required by the June, 1977 FCC Form 301

¹While FCC Form 301 may not be a rule, in the sense it is not published in the Code of Federal Regulations, it is given the force of a rule by Section 319 of the Communications Act ("The application for a construction permit shall set forth such facts as the Commission by regulation may prescribe as to ...the financial ...and other ability of the applicant to construct and operate the station....") and Rule 73.3514 ("Each application shall include all information called for by the particular form on which the application is required to be filed....").

² This Section III has been modified to reflect the fact that the Commission has abandoned the Ultravision test for financial qualifications in favor of the requirement that applicants demonstrate sufficient net liquid assets to construct a station and operate it for three months without revenue.

is required by the current version of FCC Form 301.³ Moreover, broadcast applicants headed for comparative proceedings (and this is the vast majority of applicants filing Section III, FCC Form 301) must disclose all the documentation of their financial qualifications, anyway. See Rule 1.325(c).

The one significant difference between the current version of Section III, FCC Form 301 and the June, 1977 version is the current version's requirement of a financial certification. The financial certification is simply a legal conclusion elicited from the applicant. It adds nothing to the applicant's financial qualifications. These qualifications are either established or refuted by the applicant's actions in obtaining documentation of its financial qualifications.⁴

At one time, the financial certification in Section III served the purpose of expediting processing of applications. It removed financial qualifications from the Commission's scrutiny, substituting the applicant's evaluation of its financial qualifications for the Commission's. However satisfactory or unsatisfactory this arrangement once was, today applicants' financial qualifications are fully explored under the guise of the Standard Comparative Issue. The present version of FCC Form 301 has

³ See Instructions for Section III - Financial Qualifications, FCC Form 301 (June, 1989), appended hereto as Exhibit 2.

⁴ See Instruction D(3), Instructions for Section III - Financial Qualifications, FCC Form 301 (June, 1989).

simply shifted financial processing of applications from the scores of GS-11, 12 and 13 attorney/advisors of the Mass Media Bureau to the handful of GS-16 Administrative Law Judges available to the Commission. This is an extremely wasteful allocation of the Commission's manpower.

The financial certification presently in Section III, FCC Form 301 has at least one additional flaw. It converts every error an applicant makes in evaluating its financial qualifications into a potential misrepresentation. This diverts every financial analysis of an applicant into a character inquiry. The June, 1977 Section III did not lend itself to this type of abuse. There, the applicant's net total available funds either exceeded construction and operating costs, or it did not. The applicant was either financially qualified, or it was not. The question of whether the applicant was lying scum was largely absent from FCC financial analysis.

Petitioner spent two years of his life processing June, 1977 FCC Form 301s for the Commission's Television Branch. This request to reinstate the June, 1977 Section III is not the result of nostalgia for the pre-1981 methods of financial analysis. Instead it results from the recognition that the present Section III has all of the disadvantages of the June, 1977 Section III and none of the advantages. It shifts the financial processing of applications to a handful of overworked Administrative Law Judges and subjects applicants to unnecessary attacks upon their character for

truthfulness.

In view of the matters set out above, Petitioner asks that the Commission adopt an appropriate notice of proposed rule making to revise Section III, FCC Form 301.

I declare under penalty of perjury that the foregoing is true.

A handwritten signature in black ink, appearing to read "Joseph A. Belisle". The signature is fluid and cursive, with the first name "Joseph" and last name "Belisle" clearly distinguishable.

Joseph A. Belisle
P. O. Box 570872
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(305) 232-2116

EXHIBIT 1
MODIFIED SECTION III
FCC FORM 301, JUNE, 1977

**FINANCIAL QUALIFICATIONS
OF BROADCAST APPLICANT**

NAME OF APPLICANT

The Commission is seeking in the questions that follow information as to contracts and arrangements now in existence, as well as any arrangements or negotiations, written or oral, which relate to the present or future financing of the station; the questions must be answered in the light of this instruction.

IF CONTEMPLATED EXPENDITURES ARE LESS THAN \$5,000 COMPLETE PARAGRAPH 1 OF SECTION III ONLY.

1. a. Give estimated initial costs of making installation for which application is made. If performed under a contract for the completed work, the facts as to such contract must be stated in lieu of estimates as to the several items. In any event, the cost shown must be the costs in place and ready for service, including the amounts for labor, supervision, materials, supplies and freight. Cost items such as professional fees, mobile and STL equipment, non-technical studio furnishings, etc., should be included under "Other Items" below, and itemized.

	COLUMN I (USE ONLY WHEN ITEMIZING)	COLUMN II (TOTAL)
Antenna System: (Including antenna, antenna tower, transmission line, phasing equipment, ground system, coupling equipment and tower lighting.)	\$	\$
RF Generating Equipment: (Including transmitter, tubes, filters, diplexer, remote control equipment, and automatic logger.)		
Monitoring and Test Equipment: (Including frequency monitor, phase monitor, modulation monitor, oscilloscope, dummy load, vectorscope, video monitors.)		
Program Origination Equipment: (Including control consoles, film chains, cameras, audio tape equipment, video tape equipment, program and distribution amplifiers, limiters, and transcription equipment.)		
Acquiring Land:		
Acquiring, Remodeling or Constructing Buildings:		
Other Items: (Itemize Below)		
Legal Costs:		
Engineering Costs:		
Installation Costs:		
Other Miscellaneous:		
Total Other Items:		
Total Construction Costs:		
Add Estimated Cost of Operation for <u>Three Months:</u> First Year:		
QUARTER		
Total First Year Costs To Be Met By Applicant:		
Estimated Revenues For First Year: <u>Three Months:</u>		

COLUMN I
(USE ONLY
WHEN ITEMIZING)

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Item 1 (continued):

b. State the basis of the estimates in (a), Page 1, Section III, including (in the case of an application for a new broadcast station) complete itemization of cost of operation for the ~~first year~~, including cost of proposed programming, as Exhibit No. 3 Mos. to this application.

c. The proposed construction is to be financed and paid for in the following manner. The financial plan should provide for sufficient funds to construct the station and operate it for a period of one year. If the applicant plans to rely on revenues from operation of the proposed station for any portion of operating expenses, supply as Exhibit No. 3 Mos. data in support of revenue estimate.

	COLUMN I (USE ONLY FOR LOANS AND DEFERRED CREDIT)	COLUMN II (NET TOTAL)
<u>Existing Capital:</u>	\$ _____	\$ _____
<u>New Capital:</u>	_____	_____
<u>Loans from Banks or Others:</u>	_____	_____
(Less repayments of principal and interest @ _____% due during first year <u>Three Months</u>)	_____	_____
<u>Net Total Available from Loans:</u>	_____	_____
<u>Profits from Existing Operations:</u>	_____	_____
<u>Donations:</u>	_____	_____
<u>Other Sources: (Specify)</u>	_____	_____
<u>Deferred Credit from Equipment Supplier:</u>	_____	_____
(Note: If 1st payment is due upon shipment, include 1 <u>5</u> monthly payments. If due in 30 days, 12 <u>4</u> monthly payments. If due in 60 days, 12 <u>3</u> monthly payments, etc.)	_____	_____
(a) <u>Less:</u> Down Payment _____%	_____	_____
(b) <u>Less:</u> <u>3 Mos.</u> 1st Year Payment to Principal	_____	_____
(c) <u>Less:</u> <u>3 Mos.</u> 1st Year Interest @ _____%	_____	_____
<u>Net Deferred Credit Available:</u>	_____	_____
<u>Net Total Available:</u>	_____	_____

2. a. Attach as Exhibit No. _____ a detailed balance sheet of applicant as at the close of a month within 90 days of the date of the application showing applicant's financial position. If the status and composition of any assets and liabilities on the balance sheet are not clearly defined by their respective titles, attach as Exhibit No. _____ schedules which give a complete analysis of such items.

b. Attach as Exhibit No. _____ a statement showing the yearly net income, after Federal income tax, for each of the past 2 years, received by applicant from any source.

3. Furnish the following information with respect to the applicant only. If the answer is "None" to any or all items, specifically so state:

a. Amount of funds on deposit in bank or other depository.
\$ _____

b. Name and address of the bank in which deposited (Include ZIP Code)

c. Name and address of the party in whose name the money is deposited (Include ZIP Code)

d. Conditions of deposit (in trust, savings, subject to check, on time deposit, who may draw on account and for what purpose, or other condition).

e. Are the funds deposited for the specific purpose of constructing and operating the station? ☐ Yes ☐ No
If "No," explain.

**FUNDS, PROPERTY, ETC., TO BE FURNISHED BY
PARTIES CONNECTED WITH APPLICANT OR BY OTHERS**

4. Submit as Exhibit No. _____ a statement setting forth the full name and address of each person (whether or not connected with applicant, but including partners, shareholders, or subscribers to capital stock of the applicant) who has furnished or will furnish funds, property, service, credit, loans, donations, assurances, or other things of value, or will assist in any other manner in financing station. For each person (other than financial institutions or equipment manufacturers) who has furnished or will furnish one percent or more of the total of things of value, excluding loans from financial institutions and equipment credit, supply the additional information requested in a. to d. below. For financial institutions or equipment manufacturers, supply the additional information requested in e. below. ("Furnish" or "furnished" as herein used includes payments for capital stock or other securities, loans and other credits, gifts and any other contributions.)

- a. For each person who has agreed to furnish funds, purchase stock, extend credit, or guarantee loans, submit a copy of the agreement by which each person is so obligated, showing the amount, rate of interest, terms of repayment, and security, if any. If no security is required, so state.
- b. For each person (except financial institutions) who has agreed to furnish funds or purchase stock, but who has not already done so, submit a balance sheet or, in lieu thereof, a financial statement showing all liabilities and containing current and liquid assets sufficient in amount to meet current liabilities (including amounts payable during the next year on long term liabilities) and, in addition, to indicate financial ability to comply with the terms of the agreement. The balance sheets submitted should segregate receivables and payables to show the amounts due within one year and those due after one year. The term and liquid assets refers to items such as cash, or loan value of insurance, government bonds and publicly traded securities (provided, however, that such securities must be identified by the type of security, name of issuer and the name of the market or exchange on which traded, at their current market value), or other assets which may be readily used or converted to provide funds to meet the proposed commitments. Current assets such as accounts receivable which result from normal operation of a business, inventory, etc., are not considered as a readily available source of funds without a specific showing that such assets can be relied upon to provide funds to meet proposed commitments. However, if accounts receivable have been "aged" and certified collectible within 90 days by a professional accountant, three-fourths (3/4) of such accounts receivable will be treated as "liquid." If a balance sheet or a financial statement does not clearly indicate liquid and current assets sufficient in amount to meet current liabilities and in addition, sufficient liquid assets to meet the proposed commitments, it should be supplemented by a statement showing the manner in which non-liquid assets will provide such funds. When the applicant relies upon "non-liquid assets," a statement must be submitted showing the extent to which such assets have liens or prior obligations against them. All balance sheets, or financial statements submitted in accordance with this section must be dated. In any event, a mere statement of total assets and total liabilities, or a statement of net worth, is not acceptable under the terms of this section.
- c. Net income after Federal income tax, received for the past two years by each person who will furnish funds, property, service, credit, loans, donations, assurances, or other things of value. (A statement that income tax for the required periods was in excess of a certain specified amount will be sufficient.)
- d. If applicant or any person named in the exhibit has pledged, hypothecated or otherwise encumbered any stocks or other securities for the purpose of providing applicant with funds for construction of the station herein requested, submit a statement explaining each such transaction.
- e. For financial institutions or equipment manufacturers who have agreed to make a loan or extend credit, submit a copy of the document by which the institution or manufacturer has indicated its willingness to provide such loan or credit, showing the amount of loan or credit, terms of payment or repayment of loan, collateral or security required, and rate of interest to be charged. If there are any special requirements such as a moratorium on principal or interest, or a waiver of collateral, etc., it must be shown on the document of credit. In the event such document requires special endorsements or guarantees, a statement from the party or parties required to provide such endorsement or guarantee must be submitted with the document as supporting evidence of their willingness to so provide.

EXHIBIT 2
INSTRUCTIONS TO SECTION III
FCC FORM 301, JUNE, 1989

Section 810 of the Communications Act has been interpreted with respect to limited partnerships to prohibit equity contributions or voting interests of alien limited partners, which in the aggregate exceed 20% in a broadcast licensee or which in the aggregate exceed 25% in a partnership which holds a controlling interest in a broadcast licensee. The interests held by aliens in a licensee through intervening domestically organized limited partnerships can be determined by multiplication of any intervening insulated interests in the manner set forth above with respect to corporate applicants, except that insulated limited partnership interests exceeding 50% may be multiplied rather than considered as a 100% interest. However, the multiplier is not used in calculating the limited partnership link in the ownership chain UNLESS the applicant is able to certify that the alien partner is effectively insulated from active involvement in the partnership affairs. For example, see Instruction A, above.

The applicant must determine the citizenship of each officer and director. It must also determine the citizenship of each shareholder or else explain how it determined the relevant percentages. For large corporations, a sample survey using a recognized statistical method is acceptable for this purpose.

- E. Commission policies and litigation reporting requirements for broadcast applicants have been revised with a view to focusing on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct which demonstrates the proclivity of an applicant to deal truthfully with the Commission and to comply with its rules and policies. The categories of relevant non-FCC misconduct include: (1) misrepresentations to any other governmental unit resulting in criminal or civil violations; (2) criminal convictions involving false statements or dishonesty; (3) certain felony convictions; and (4) adjudicated violations of anticompetitive or antitrust laws that are broadcast related. The parameters of the revised policies and requirements are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rod 421 (1985).

INSTRUCTIONS FOR SECTION III - FINANCIAL QUALIFICATIONS

- A. All applicants filing Form 801 must be financially qualified to effectuate their proposals. Certain applicants (for a new station, to reactivate a silent station, or if specifically requested by the Commission) must demonstrate their financial qualifications by filing Section III. DO NOT SUBMIT Section III if the application is for changes in operating or authorized facilities.

An applicant for a new station must attest it has sufficient net liquid assets on hand or committed sources of funds to construct the proposed facility and operate for three months without additional funds. In so certifying, the applicant is also attesting that it can and will meet all contractual requirements, if any, as to collateral, guarantees, donations, and capital investments. As used in Section III, "net liquid assets" means the lesser amount of the net current assets or of the liquid assets shown on a party's balance sheet, with net current assets being the excess of current assets over current liabilities.

- C. Documentation supporting the certification of financial qualifications need not be submitted with this application but must be available to the Commission upon request. The Commission encourages that all financial statements used in the preparation of this application be prepared in accordance with generally accepted accounting principles.
- D. (1)(a) The applicant must estimate the initial costs of constructing and operating the facility proposed in the application. The estimate for constructing the facility should include, but is not limited to, costs incurred for items listed below. In calculating costs for the items below, determine the costs for the items in place and ready for service, including amounts for labor, supervision, materials, supplies, and freight:

Antenna System (including antenna, antenna tower, transmission line, phasing equipment, ground system, coupling equipment and tower lighting);

RF Generating Equipment (including transmitter, tubes, filters, diplexer, remote control equipment, and automatic logger);

Monitoring and Test Equipment (including frequency monitor, modulation monitor, oscilloscope, dummy load, vectorscope, and video monitors);

Program Origination Equipment (including control consoles, film chains, cameras, audio tape equipment, video tape equipment, program and distribution amplifiers, limiters, and transcription equipment);

Acquiring Land;

Acquiring, Remodeling or Constructing Buildings;

Services (including legal, engineering, and installation costs); and

Other Miscellaneous Items (including mobile and STL equipment, non-technical studio furnishings, etc.)

- (b) The estimate must also include the costs of operating the proposed facility for the first three months, including the costs of proposed programming, without relying on advertising or other revenues to meet operating costs. To arrive at an estimate of the total costs to be met by the applicant, the total construction costs should be added to the estimated cost of operation for three months.
- (2) The applicant must also identify, in the application, its sources of funding for the construction and operation of the proposed facility for the first three months. For each source of funding, the applicant must identify the source's name, address, telephone number, a contact person if the source is an entity, the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by the source. The total amount of funds to be supplied by all the sources listed should equal or exceed the estimated cost of construction and operation computed in accordance with paragraph (1) and stated in the application in response to Question 2, Section III.

The funding sources listed on the application should include, if applicable: existing capital, new capital, loans from banks (identified separately), loans from others (identified separately), profits for existing operations, donations, and net deferred credit from equipment suppliers (identified separately and determined by deducting from the deferred credit the down payment, payments to principal, and interest payments). (Note: if the first equipment payment is due upon shipment, the applicant must include five monthly payments; if due in 60 days, four monthly payments; if due in 90 days, three monthly payments, etc.)

- (3) The applicant must also have on hand, at the time it files its application, BUT NEED NOT SUBMIT WITH THE APPLICATION, the following documentation:

(a) For the applicant:

A detailed balance sheet at the close of a month within 90 days of the date of the application showing the applicant's financial position.

A statement showing the yearly net income, after Federal income tax, for each of the past two years, received by the applicant from any source.

- (b) For each person identified in response to Question 8, Section III, who has already furnished funds, purchased stock, extended credit, or guaranteed loans:

A copy of the agreement obligating the party to furnish funds, showing the amount furnished, the rate of interest, the terms of repayment, and security, if any.

- (c) For each person identified in response to Question 8, Section III, who has agreed to furnish funds, purchase stock, extend credit, or guarantee loans, a balance sheet or a financial statement showing:

All liabilities and current and liquid assets sufficient to meet current liabilities;

Financial ability to comply with the terms of the agreement to furnish funds, purchase stock, extend credit, or guarantee loans; and

Net income after Federal income tax, received for the past two years.

Note: If the statement does not indicate current and liquid assets sufficient to meet the proposed commitments, the financial statement must be supplemented by a statement showing how non-liquid assets will be used to provide the funds, and the extent to which such assets have liens or prior obligations against them.

- (d) For financial institutions or equipment manufacturers, identified in response to Question 8, Section III, who have agreed to make a loan or extend credit:

The document by which the institution or manufacturer has agreed to provide the loan or credit, showing the amount of loan or credit, terms of payment or repayment of the loan, collateral or security required, rate of interest to be charged, and special requirements (e.g., moratorium on principal or interest, waiver of collateral, etc.); and

A statement from any parties required to provide special endorsements showing their willingness to provide such endorsements.